

Samuel A. Schwartz, Esq.
Nevada Bar No. 10985
Bryan A. Lindsey, Esq.
Nevada Bar No. 10662
The Schwartz Law Firm, Inc.
6623 Las Vegas Blvd. South, Suite 300
Las Vegas, Nevada 89119
Telephone: (702) 385-5544
Facsimile: (702) 385-2741
Attorneys for Martifer Solar, Inc.

UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF NEVADA

In re:)	Case No. 14-10355-ABL
)	
Martifer Aurora Solar, LLC, a Nevada limited liability company,)	Chapter 11
)	
)	Jointly Administered with:
Martifer Solar, USA, Inc., a California corporation,)	Case No.: 14-10357-ABL
)	
)	Hearing Date: March 10, 2014
Debtors.)	Hearing Time: 9:30 a.m.
)	

RESPONSE AND RESERVATION OF RIGHTS TO THE APPLICATION FOR ORDER AUTHORIZING RETENTION AND EMPLOYMENT OF CARLYON LAW GROUP, PLLC AS SPECIAL COUNSEL TO ROLAND KISER AND KLAUS BERNHART, RESPONSIBLE OFFICERS OF THE DEBTOR EFFECTIVE FEBRUARY 27, 2014

Martifer Solar, Inc. (“**MSI**”), by and through its undersigned counsel of record, files this response and reservation of rights (the “**Response**”) to the Application for Order Authorizing Retention and Employment of Carlyon Law Group, PLLC as Special Counsel to Roland Kiser and Klaus Bernhart, Responsible Officers of the Debtor Effective February 27, 2014 (the “**Application**”). In support of this Response, MSI respectfully represents as follows:

Response and Reservation of Rights

1. MSI generally does not oppose the desire of Roland Kiser (“**Kiser**”) and Klaus Bernhart (“**Bernhart**”) to employ counsel, but MSI files this Response to clarify a few representations in the Application and to reserve its rights to object to any application filed by

1 Carlyon Law Group, PLLC (“**Carlyon**”) seeking compensation from the estate of the above-
2 captioned debtors (the “**Debtors**”) for the services rendered on behalf of the Officers.

3
4 2. First, MSI did not guarantee any monetary obligations of the Debtors under the
5 employment agreements with Kiser and Bernhart, despite the Application’s assertion of MSI’s
6 guarantee. See Application, p. 5, ¶ 19. Simply put, the employment agreements are between
7 Martifer Solar USA, Inc. and Kiser and Bernhart. No other person or entity is a party of the
8 employment agreements and no other person or entity has guaranteed any obligations thereunder.
9

10
11 3. Second, the Application is not entirely clear as to Kiser and Bernhart’s reasons to
12 employ counsel. They first indicate they need to be advised by counsel “who is not directed by the
13 Debtors’ parent/DIP Lender” (see Application, p. 5, ¶ 20), but later state Kiser and Bernhart need
14 knowledgeable counsel “separate and apart from Counsel to the Debtors.” See Application, p. 7, ¶
15 27.
16

17
18 4. Next, while the Debtors previously designated Kiser and Bernhart as the designated
19 responsible persons for the Debtors’ bankruptcy cases, on March 7, 2014, the Debtors filed an
20 application to hire FTI Consulting, Inc. (“**FTI**”), as (1) Chief Restructuring Officer and Certain
21 Other FTI Professionals as Temporary Employees to the Debtors Pursuant to Bankruptcy Code
22 Section 363 and (2) Financial Advisor and Exclusive Transaction Agent to the Debtors Pursuant to
23 Bankruptcy Code Section 328 *Nunc Pro Tunc* to March 6, 2014 (the “**FTI Application**”), Docket
24 No. 333. Specifically, the FTI Application indicates that upon approval of the FTI Application:
25
26

27
28 “Michael Tucker, as Debtors’ Chief Restructuring Officer, will become the
29 natural person responsible for the duties and obligations of the Debtors in these
30 Chapter 11 Cases, thereby superseding the prior designations of Roland Kiser and
31 Klaus Bernhart as Debtors’ responsible persons.”
32
33
34

1 See FTI Application, p. 4, ll. 4-8. Accordingly, MSI does not expect Kiser and Bernhart to continue
2 in their capacities as the designated responsible persons for the Debtors' Chapter 11 cases beyond
3 the term of their employment contracts.
4

5 5. Finally, MSI requests that any order approving the Application makes clear that (a)
6 no DIP financing can be used to pay Kiser and Bernhart's counsel, and (b) none of the Debtors' cash
7 collateral will be used either.
8

9 Dated this 10th day of March, 2014.
10

11 Submitted By:

12 The Schwartz Law Firm, Inc.
13

14 /s/ Samuel A. Schwartz

15 Samuel A. Schwartz, Esq.

16 Nevada Bar No. 10985

17 Bryan A. Lindsey, Esq.

18 Nevada Bar No. 10662

19 The Schwartz Law Firm, Inc.

20 6623 Las Vegas Blvd. South, Suite 300

21 Las Vegas, Nevada 89119

22 Telephone: (702) 385-5544

23 Facsimile: (702) 385-2741

24 Attorneys for Martifer Solar, Inc.
25
26
27
28
29
30
31
32
33
34

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent electronically via the Court's CM/ECF system to the following on March 10, 2014:

BRETT A. AXELROD on behalf of MARTIFER AURORA SOLAR, LLC, MARTIFER SOLAR USA, INC., MARTIFER SOLAR USA, INC., and MARTIFER AURORA SOLAR, LLC, baxelrod@foxrothschild.com, pchlum@foxrothschild.com;ldupree@foxrothschild.com

CARLETON R. BURCH on behalf of Creditor Hanover Insurance Company crb@amclaw.com, car@amclaw.com;sxc@amclaw.com;sdb@amclaw.com

DAWN M. CICA on behalf of MARTIFER AURORA SOLAR, LLC, MARTIFER SOLAR USA, INC., and MARTIFER SOLAR USA, INC. dcica@foxrothschild.com, amwilson@foxrothschild.com

NATALIE M. COX on behalf of CATHAY BANK ncox@klnevada.com, bankruptcy@klnevada.com;kdunn@klnevada.com;ncox@ecf.inforuptcy.com

JENNIFER V. DORAN on behalf of Creditor EPG SOLAR LLC jdoran@hinckleyallen.com, calirm@hinckleyallen.com

MICHAEL GERARD FLETCHER on behalf of Interested Party CATHAY BANK mfletcher@frandzel.com, efiling@frandzel.com,shom@frandzel.com

RANDOLPH L. HOWARD on behalf of Interested Party CATHAY BANK rhoward@klnevada.com, ckishi@klnevada.com;bankruptcy@klnevada.com;ckishi@ecf.inforuptcy.com

ROBERT R. KINAS on behalf of Creditors CALIFORNIA CEC, LP and CLEAN ENERGY CONSTRUCTORS, LLC rkinas@swlaw.com, jmath@swlaw.com;mfull@swlaw.com;bgriffith@swlaw.com;nunzueta@swlaw.com;docket_las@swlaw.com;cgianelloni@swlaw.com;nkanute@swlaw.com;kmiltimore@swlaw.com

MICAELA RUSTIA MOORE on behalf of MARTIFER AURORA SOLAR, LLC, MARTIFER SOLAR USA, INC., MARTIFER SOLAR USA, INC., mmoore@foxrothschild.com, pchlum@foxrothschild.com;ldupree@foxrothschild.com

U.S. TRUSTEE - LV - 11 USTPRegion17.lv.ecf@usdoj.gov

REED S WADDELL on behalf of Interested Party CATHAY BANK rwaddell@frandzel.com, efiling@frandzel.com, sking@frandzel.com

CANDACE C. CARLYON on behalf of Roland Kiser and Klaus Bernhart
ccarlyon@ccarlyon.com

/s/ Janine Lee
Janine Lee